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13 Attorneys for Plaintiff JOELLEN HRUBY

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UNITED STATES DISTRICT COURT OF CALIFORNIA
NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO DIVISION

15
16 JOELLEN HRUBY,
17 Plaintiff,
18
19 vs.
20 ALLIED PROPERTY AND CASUALTY
21 INSURANCE COMPANY, AMCO
22 INSURANCE COMPANY, and
DOES 1-10,
23 Defendants.

24
25 No. CV 07-06031 EMC
**JOINT CASE MANAGEMENT
STATEMENT**

Date: July 23, 2008
Time: 1:30 pm
Room: Courtroom C
[Hon. Edward M. Chen]

26
I. JURISDICTION AND SERVICE

27 This action was originally filed in the Superior Court of the State of California in and for
the County of Alameda on September 21, 2007. It was removed by Allied Property and Casualty
28 Insurance Company and AMCO Insurance Company (collectively "Allied") on the basis of

1 diversity jurisdiction pursuant to 28 U.S.C. section 1332; the parties are citizens of different states
 2 and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

3 Venue is proper in the Northern District of California, San Francisco Division pursuant to
 4 28 U.S.C. section 1391 because Allied is subject to personal jurisdiction in this judicial district
 5 and a substantial part of the events or omissions that give arise to this lawsuit occurred in the
 6 Northern District of California.

7 All parties have been served, and it is not anticipated that any additional parties will be
 8 added.

9 **II. FACTS**

10 This matter arose after a large tree planted on an up-slope neighbor's property of plaintiff
 11 JoEllen Hruby ("Hruby") became uprooted and struck a portion of her house causing damage.
 12 The claim was reported to Allied on or about September 24, 2006. Allied investigated and in
 13 December paid Ms. Hruby some \$13,000 for costs related to removal of the tree and repairs to the
 14 house.

15 On May 4, 2007, Hruby contacted Allied through her attorney to advise Allied that there
 16 were additional damages to the house. Allied was asked in the letter to arrange a further
 17 inspection. Hruby retained an engineer to inspect the house who issued a report on September 14,
 18 2007. Hruby also retained a contractor who provided her with an estimate to complete repairs to
 19 the home, including replacement of the entire roof, for \$67,495.48. In response Allied retained the
 20 services of an engineer to inspect the home, who issued a report dated October 5, 2007. In
 21 addition, Allied retained an independent adjuster to inspect the home and to provide a revised
 22 estimate for repairs. This independent adjuster issued a report on November 17, 2007, with an
 23 estimate for repairs to the home of \$42,718.48, exclusive of costs to repair the roof. Allied then
 24 obtained an estimate from a roofing contractor for roof repairs of \$9,900. Subsequent to this,
 25 Allied tendered an additional payment to Hruby of \$35,273.16 on December 14, 2007 to reflect
 26 the revised cost to complete repairs to the home.

27 This action was filed by Hruby on September 21, 2007, in the Alameda County Superior
 28 Court, and served on Allied on November 2, 2007. On December 3, 2007, Allied filed an

1 Amended Notice of Removal to this Court.

2 **III. LEGAL ISSUES**

3 Hruby contends that Allied did not timely and reasonably investigate her claim. Hruby
4 further contends that Allied did not timely and reasonably make payments due under the policy.
5 As such, Hruby argues that Allied has breached its contract with her. Further, Hruby argues that
6 Allied breached the covenant of good faith and fair dealing and in doing so acted maliciously and
7 oppressively. On its part, Allied denies that it breached its policy because it timely responded to
8 and paid all amounts that it determined were owed. Allied also denies that it breached the
9 covenant of good faith and fair dealing as it acted reasonably and in good faith in handling
10 Hruby's claim. Finally, Allied contends that there is no showing that would support a claim for
11 punitive damages.

12 **IV. MOTIONS**

13 The parties are unaware of any motions that will be filed at the present time. Allied does
14 anticipate that it may, at a later date, file a motion for summary judgment or summary adjudication
15 after discovery has taken place.

16 **V. AMENDMENT OF PLEADINGS**

17 The parties do not anticipate any amendment to the pleadings.

18 **VI. EVIDENCE PRESERVATION**

19 The parties agree that there are presently no special issues related to preserving evidence.

20 **VII. DISCLOSURES**

21 The parties have conducted their Rule 26(f) meet and confer and have served their initial
22 disclosures.

23 **VIII. DISCOVERY**

24 The parties have not yet conducted any discovery except that they stipulated to allow
25 Allied to conduct a site inspection in advance of the initial discovery disclosures. The parties do
26 not anticipate the need to enlarge any of the requirements for discovery, except they would extend
27 the number of allowed interrogatories from 25 to 35.

IX. CLASS ACTIONS

This is not a class action.

X. RELATED CASES

Neither party is awar

Neither party is aware of any related cases or proceedings.

XI. RELIEF

Plaintiff is seeking the recovery of all sums for repairs to her home. In addition, plaintiff is seeking costs related to her loss of use. As part of her claim for bad faith, plaintiff is seeking special and general damages, attorneys fees and is claiming punitive or exemplary damages. Allied contends that all sums due plaintiff under the policy have been or will be paid; that its handling of her claim does not rise to the level of bad faith to award such damages; and finally, that plaintiff cannot establish by clear and convincing evidence acts of malice, oppression, or fraud to justify exemplary damages.

XII. SETTLEMENT AND ADR

The parties have agreed to have this matter assigned to a magistrate judge for early settlement conference.

XIII. MAGISTRATE JUDGE

All parties have consented to proceed before a magistrate judge for all purposes.

XIV. OTHER REFERENCES

19 As set out above, the parties have agreed to have this matter assigned to a magistrate judge
20 for an early settlement conference.

XV. NARROWING OF ISSUES

22 The parties are not aware of any issues that can be narrowed through agreements or
23 motions.

XVI. EXPEDITED SCHEDULE

The parties are not seeking an expedited schedule.

XVII. SCHEDULING

The parties have agreed to the following dates concerning this matter:

Initial Disclosures under Rule 26

May 27, 2008

<u>Expert Disclosures</u>	-	May 18, 2009
<u>Supplemental Expert Disclosures</u>	-	May 29, 2009
<u>Complete Non-Expert Discovery</u>	-	April 27, 2009
<u>Complete Expert Discovery</u>	-	June 18, 2009
<u>Complete Law and Motion</u> (including dispositive and non-dispositive motions):	-	July 27, 2009
<u>Pre-trial Conference</u>	-	August 10, 2009
<u>Trial</u>	-	September 28, 2009

XVIII. TRIAL

Both parties have demanded a jury trial.

XIV. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS

Allied has filed its Certification of Interested Parties as required by Civil Local Rule 3-16 on December 3, 2007. Hruby filed her Certification of Interested Parties on May 13, 2008.

XV. OTHER MATTERS THAT MAY FACILITATE THE JUST, SPEEDY AND INEXPENSIVE DISPOSITION OF THE MATTER

There are no other matters that the parties wish to bring to the Court's attention.

DATED: July 11, 2008

RUDLOFF WOOD & BARROWS LLP

By: /s./ Edward P. Murphy
Edward P. Murphy

Attorneys for Defendants ALLIED PROPERTY
AND CASUALTY INSURANCE COMPANY and
AMCO INSURANCE COMPANY

DATED: July 11, 2008

LOMBARDI, LOPER & CONANT LLP

By: /s./ Peter O'Glaessner
Peter O. Glaessner

Attorneys for Plaintiff JOELLEN HRUBY